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EX PARTE OR LATE FILED

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SEP 27 2004

Federal Communications Commission  
Office of Secretary

**VIA HAND DELIVERY**

September 27, 2004

**EX PARTE**

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Room TW-A325  
Washington, DC 20554

Re: Oral *Ex Parte* Presentation – CC Docket Nos. 96-98 and 99-68

Dear Ms. Dortch:

On September 24, 2004, Steven Teplitz, Vice President and Associate General Counsel, Time Warner Inc., and the undersigned, of Lampert & O'Connor, P.C., met with Dan Gonzalez of the Office of Commissioner Martin, regarding the above referenced dockets.

In the meeting, we discussed the pending remand proceeding regarding the order on intercarrier compensation for ISP-bound traffic and urged the FCC to hold that the plain language of Section 251(b)(5) applies to ISP-bound traffic, reaffirming a prior FCC finding that ISP traffic should be treated like other traffic since the costs of termination are the same (ISP Remand Order ¶¶ 90-94). Time Warner also noted that the concerns about arbitrage that in large part spurred the FCC's decisions in this area are no longer as pressing as they once appeared, since dial-up Internet access is decreasing not increasing. Time Warner stressed that contrary to the position proffered by some of the ILECs, ISP-bound traffic is not interexchange access traffic and should not be treated as such, noting that the FCC found in 1997 that ISPs do not use the network in the same manner as interexchange carriers. Concerning the FCC's authority to establish compensation rates solely under Section 201 for ISP-bound traffic, Time Warner urged that such a result is legally questionable and would be likely to create continued uncertainty and disputes. Time Warner urged the FCC instead to reach a narrow decision that will sustain judicial scrutiny and afford the FCC maximum flexibility to address broader intercarrier compensation issues in the future. Finally, Time Warner urged that the FCC be mindful of the importance of ensuring that dial-up calls to ISPs remain affordable for consumers, especially to rural consumers, and thus urged that any action regarding virtual NXX issues be consistent with this goal.

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September 27, 2004

Page 2

Pursuant to Section 1.1206(b) of the Commission's rules, two copies of this letter are being provided to you for inclusion in the public record of each of the above-captioned proceedings. Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in dark ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Donna N. Lampert  
Counsel for Time Warner Inc.

cc: Dan Gonzalez